

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**LATIN AMERICAN SPORTS CLUB, INC.
DOCKET NO. 29-2002-0379**

PROPOSED ORDER

The Criminal Investigation Division of the Indiana Department of Revenue conducted an investigation of the Latin American Sports Club, Inc. As a result of the investigation, on January 7, 2002, the Petitioner was assessed civil penalties of four thousand five hundred dollars (\$4,500). The Petitioner, Latin American Sports Club, Inc., was represented by Charles F. Leonard of Tremper, Bechert, Leonard & Terrill, 800 South Calhoun Street, Fort Wayne, Indiana 46802. Attorney Steve Carpenter, appeared on behalf of the Indiana Department of State Revenue.

FINDINGS OF FACTS

- 1) The Criminal Investigation Division of the Indiana Department of Revenue conducted an investigation of the Latin American Sports Club, Inc. on January 2, 2002.
- 2) As a result of the investigation, on July 11, 2002, the Petitioner was assessed civil penalties of four thousand five hundred dollars (\$4,500).
- 3) Petitioner protested the Department's proposed actions on August 1, 2002.
- 4) The Department acknowledged the Petitioner's appeal in a letter dated August 7, 2002.
- 5) The Department contacted the Petitioner a second time regarding setting a hearing on August 29, 2002.
- 6) On October 2, 2002, the Petitioner requested that the Department contact his attorney Charles F. Leonard.
- 7) The Department sent a letter addressed to Petitioner's Attorney on October 8, 2002 in regards to setting a hearing date and time. Copies of all prior correspondence were also sent in that same letter.
- 8) The Department sent Petitioner's Attorney a letter dated May 21, 2003 regarding the legislative changes that directly affected the procedures governing the administrative hearing.
- 9) Pursuant to IC 4-21.5-3-1, notice was given to Petitioner's counsel on September 4, 2003 regarding a possible dismissal of the appeal if no response was received by the Department on or before November 7, 2003.
- 10) Petitioner's counsel has repeatedly failed to respond to the Department's correspondence.

STATEMENT OF LAW

- 1) IC 4-21.5-3-24 states, “(a) At any stage of a proceeding, if a party fails to:
 - (1) file a responsive pleading required by statute or rule;
 - (2) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or
 - (3) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;
 the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.
 - (b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.
 - (c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.
 - (d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 of this chapter to resolve any issue of fact.

CONCLUSIONS OF LAW

- 1) IC 4-21.5-3-24 states, “(a) At any stage of a proceeding, if a party fails to: (1) file a responsive pleading required by statute or rule; (2) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or (3) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action; the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.
- 2) The Petitioner’s failure to respond to the Department’s numerous letters is grounds for a proposed dismissal order pursuant to IC 4-21.5-3-24.

PROPOSED ORDER

The Administrative Law Judge orders the following:

Petitioner's appeal is dismissed pursuant to IC 4-21.5-3-24.

- 1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
- 2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: November 24, 2003

Bruce R. Kolb / Administrative Law Judge